JUDICIAL CRIMES!

Complaints and Charges

—

Attorney-General Major et al

vs.

Judge Stubbs

—

Important Questions for the People of Canada:

Are Our Judges Free and Independent?

Or Are They Bridled and Muzzled?

Is Justice Administered Without Fear, Affection or Favor?

By
LEWIS ST. GEORGE STUBBS
Senior County Court Judge
Eastern Judicial District of Manitoba

Ye shall not respect persons in judgment; ye shall hear the small and the great alike; ye shall not be afraid of the face of any man; for the judgment is God's.

Deut. 1, 17.

Woe unto them that decree unrighteous decrees and to the writers that write iniquity; to turn aside the needy from judgment and to take away the right of the poor of my people.

Isaiah 10, 1-2.

Righteousness and justice are the foundations of Thy throne.

Psalm 89, 15.

Open thy mouth, judge righteously, and plead the cause of the poor and needy.

Proverbs 31, 9.

FOREWORD

A commission of inquiry has been issued under Section 31 of The Judges' Act, to investigate certain complaints or charges of judicial misconduct against me, with a view to remove me from office.

The matter has aroused nation-wide interest which has extended beyond Canada. For several weeks the press from coast to coast has been reporting and discussing it. Numerous editorials have been written upon it. Many of them I have read. They are generally so favorable and eulogistic that only with difficulty can I recognize myself as the subject of them. Letters come to me daily from all parts congratulating me. Resolutions are being passed by various organizations commending me. The profusion of sentiment in my favor surprises me. My friends appear to be legion. I deeply appreciate their sympathy and support. I am thankful and grateful to them all.

There is, however, much confusion as to what it is all about. Only recently have I known myself. For several weeks, although the fact that a commission had issued to investigate my alleged judicial misconduct was blazoned all over the continent and beyond it, the authorities did not deign to communicate with me, or to even notify me of the complaints and charges against me. And my only intimation so far, apart from the public press, is from the counsel for the commission, who has served me with copies of the complaints or charges that are the subject-matter of the inquiry.

There are five complaints or charges to be investigated. First and foremost is my alleged misconduct in connection with the famous (or infamous) Macdonald Will case. This complaint, which specifically petitions for a commission of inquiry, was filed collectively by the Judges of the Courts of Appeal and King's Bench of the Province, and is almost ancient history.

Then there are four distinct separate complaints filed by the Attorney-General of the Province, relating to four criminal cases which I tried, namely, the Duggles, Tansowny, Gibson, and Rae cases.

There are so many requests for particulars of these complaints and charges, that I have decided to publish them, so that all who want them may have them, and know the enormity of my crimes and the heinousness of my misconduct. They can then judge for themselves my fitness for the bench.

I can only briefly refer to the Macdonald Will case. Full particulars would require a volume in itself. Those who want further information may obtain it from a pamphlet which I published in February, 1930, available at the Lasker Bookshop, Limited, 427 Portage Avenue, and Colin MacPhail's Bookstore, 284 Vaughan Street, in this city.

The particulars of the other four complaints or charges are given in full.

The issue is the free right of judicial comment and the independence of the bench; whether judges are to be reduced to censored and controlled political puppets of the powers that be; whether they are to be only official marionettes and phonographs—mere judicial recorders and rubber stamps; or whether they are to be totally independent and free to exercise the rights, powers, duties and responsibilities of their high office assured and guaranteed to them by the constitution under which we live.

This issue was finally settled in the latter half of the eighteenth century. So we are making progress backward. The commission of inquiry is an amazing, assinine anachronism, convened and designed to "get" me—"a punitive expedition and a ceremonial execution." I accept the insolent challenge to my constitutional rights and status. I enter the lists, thrice armed with my quarrel just, my cause righteous, my conscience clear, and will fight it through.

Of course, it is suggested that the whole matter is now SUB JUDICE, and, therefore, I should do nothing and say nothing before the inquiry is held. In other words, because two Bourbon governments, in the abuse and prostitution of their executive powers, conspire and concert an auto da fé

to adjudge and punish me as an incorrigible and impenitent judicial heretic, I should calmly acquiesce in the process until the curtain has rung up on the performance. I do not see it that way. If that is what is expected, another subject should have been selected for the operation.

The very institution of the commission of inquiry, in the given circumstances, is a callous, cruel and monstrous injustice to any judge. But it is worse that that. It is in itself the most subversive blow ever struck at the judiciary in Canada, beside which my alleged judicial misconduct pales into an utter insignificance.

L. ST. G. STUBBS,

Senior County Court Judge,

Eastern Judicial District of Manitoba.

Judges' Chambers, Law Courts,

Winnipeg, Manitoba.

25th October, 1932.

No argument, we may suppose, can now be needed, against permitting a legislature or an executive, not identified in interest with the people, to prescribe opinions to them, and determine what doctrines or what arguments they shall be allowed to hear.

Speaking generally, it is not, in constitutional countries, to be apprehended, that the government, whether completely responsible to the people or not, will often attempt to control the expression of opinion, except when in doing so it makes itself the organ of the general intolerance of the public.

Let us suppose, therefore, that the government is entirely at one with the people, and never thinks of exerting any power of coercion unless in agreement with what it conceives to be their voice.

But I deny the right of the people to exercise such coercion, either by themselves or by their government. The power itself is illegitimate. The best government has no more title to it than the worst. It is as noxious, or more noxious, when exerted in accordance with public opinion, than when in opposition to it.

If all mankind minus one, were of one opinion, and only one were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.

Were an opinion a personal possession of no value except to the owner; if to be obstructed in the enjoyment of it were simply a private injury, it would make some difference whether the injury was inflicted on only a few persons or on many. But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.

—JOHN STUART MILL, on Liberty.

That men so placed (judges) should be independent of passing opinion is now a proposition too well established to need discussion. That this independence is best secured by making entirely free the right of judicial comment in court is an obvious corollary. Nor is it less clear that only the gravest misconduct can ever justify the removal of a judge from office. To strike at his security is to undermine his independence; and we have the amplest proof from the history of the bench that an insecure judiciary tends inevitably to corruption. No theses in political science are better established than these; and none is more universal in its acceptance by the modern world.

—Professor Harold J. Laski in "Studies in Law and Politics."

COMPLAINT OR CHARGE NO. 1

THE MACDONALD WILL CASE

This has always been considered by my censors and opponents my maximum offence. It is the chief count in the indictment against me.

In February, 1930, the judges of the Superior Courts of the province collectively filed with the then Minister of Justice, the Hon. Ernest Lapointe, a lengthy complaint reviewing in detail my conduct and speech, with their comments thereon and conclusions thereupon, in connection with the Macdonald Will case which had been before me in my capacity of Surrogate Court Judge. This complaint concluded with a request for a commission of inquiry and was signed by all of the then judges of the two Superior Courts, as follows:

"We beg to state that it is our considered opinion that Judge Stubbs has been guilty of misbehaviour within section 31 of The Judges Act, and that the matter is not one for Contempt proceedings. It is therefore respectfully asked that a commission of inquiry be issued under The Judges Act.

Respectfully submitted,

(Sgd.) JAMES E. P. PRENDERGAST,
Chief Justice of Manitoba

D. A. MacDONALD,
C.J.K.B.

C. P. FULLEDTON, J.A.
R. M. DENNISTOUN, J.A.
W. H. TRUEMAN, J.A.
H. A. ROBSON, J.A.

A. C. GALT (J.)
A. K. DYSART (J.)
J. E. ADAMSON (J.)
J. F. KILGOUR (J.)
W. J. DONOVAN (J)"

Mr. Lapointe considered the matter and declined to take any action upon it, as was reported at the time, for two reasons: First, what was alleged to have been said and done could not be considered judicial misconduct, and, second, if it was such, it was not a matter within federal competence, but was solely within provincial jurisdiction, as the judges of the Surrogate Courts are appointed by the province and are not under federal jurisdiction.

The present Minister of Justice, the Hon. Hugh Guthrie, now resurrects this matter from the archieves of his department. By what right does he reopen a matter considered and closed by his predecessor? He not only sets himself up as my censor, but that of his predecessor in office as well.

A layman can see that the issue of a commission of inquiry under section 31 of The Judges Act to investigate the conduct of a Surrogate Court Judge is ultra vires. That section relates only to County Court Judges. Ottawa has no jurisdiction over Surrogate Court Judges. It would be just as sensible and just as legal to issue a commission under The Judges Act to investigate the conduct of a police magistrate of the province. The collective action of the Superior Court Judges in asking for it to be done was as stupid as the individual action of Mr. Justice Donovan in issuing the foolish mandamus which started all the trouble.

Of course, not half the Macdonald Will tale of iniquity has been told. If more is wanted, I can oblige. In fact, if I can ever find time in my busy life, I intend to write a history of the case.

I do not admit any wrongdoing of any sort in connection with the Macdonald Will case, but whatever wrong I may have done has surely been expiated in full? My provincial persecutors have pursued me until they have ousted me from my surrogate court judgeship. They have reduced my income by over one-third, until now I am the lowest paid judge in the province. And yet they are not satisfied and thirst for more of my blood.

Why has this Macdonald Will affair been resurrected? Simply to bolster up the absurd and flimsy complaints or charges made against me by the Attorney-General and to give an appearance of substance to the foolish and fatuous commission of inquiry. Ottawa is as thirsty for my blood as Winnipeg.

After reading the complaints and charges made by the Attorney-General, as set out hereinafter, any sensible person will realize how silly and stupid is the proposition that they amount to judicial misconduct for which I ought to be removed from office. The fact that they could be so considered by the Attorney-General of this province is an excellent illustration of his general unfitness for his high office, now pretty generally recognized, and shows that he has no proper conception of the office, functions and constitutional status of a judge. He affords a splendid example of the danger of a small man in high office with large powers—a midget in a seat of the mighty.

BENCHERS ALSO COMPLAIN AND ASK FOR ACTION

The Following is an extract from the annual report of the Benchers to the Law Society for the year 1930:

"THE LAW SOCIETY OF MANITOBA

Report of the Benchers for the Year 1930

To the Members of the Law Society

The Benchers elected in April, 1928, and those appointed to fill vacancies are:

Eastern Judicial District:

EDWARD ANDERSON, K.C.
A. J. ANDREWS, K.C.
E. H. COLEMAN, K.C.
A. E. HOSKIN, K.C.
R. B. GRAHAM, K.C.
R. D. GUY, K.C.
T. A. HUNT, K.C.
D. H. LAIRD, K.C.
EDWIN LOFTUS, K.C.
J. A. MACHRAY, K.C.
HORACE ORMOND, K.C.
ISAAC PITBLADO, K.C.
W. J. TUPPER, K.C.
C. P. WILSON, K.C.

Western Judicial District: R. M. MATHESON, K.C.
N. W. KERR, K.C.

Central Judicial District: E. A. McPHERSON, K.C.

Northern Judicial District: G. A. EAKINS, K.C.

Southern Judicial District: E. E. SPENCER

Dauphin Judicial District: C. S. A. ROGERS, K.C.

Ex-Officio Benchers

HON. HUGH GUTHRIE, K.C.
RT. HON. ARTHUR MEIGEN, K.C.
J. H. HOWDEN, K.C.
R. W. CRAIG, K.C.
HON. MAURICE DUPRE, K.C.
HON. E. J. McMURRAY
A. B. HUDSON, K.C.
R. JACOB, K.C.
HON. W. J. MAJOR, K.C.

Officers

President: A. E. HOSKIN, K.C.
Treasurer: W. J. TUPPER, K.C.
Secretary: EDWIN LOFTUS, K.C.

. . . . . .

The Benchers forwarded to the Hon. the Minister of Justice and the Hon. the Attorney-General of Manitoba a resolution asking for action in connection with the conduct of His Honour Judge Stubbs in the Macdonald Will case.

. . . . . .

On behalf of the Benchers,
B. E. CHAFFEY,
Assistant Secretary."

Winnipeg, 26th February, 1931.

COMPLAINT OR CHARGE NO. 2

LETTER FROM ATTORNEY-GENERAL TO MINISTER OF JUSTICE

December 15th, 1930.

Honourable Hugh Guthrie, K.C.
Minister of Justice,
Ottawa, Canada.
Dear Sir:

Re His Honour Judge Stubbs

I enclose you:

(c) Copy of the formal charge or indictment in the case of William H. Duddles in the County Judge's Criminal Court at Winnipeg,

(2) Transcript of proceedings on November 24th, 1930, in the said case of William H. Duddles before His Honour Judge Stubbs of the said County Court Judges' Criminal Court at Winnipeg,

(3) Copy of the formal charge or indictment in the case of Jack Tansowny in the County Court Judges' Criminal Court in Winnipeg,

(4) Transcript of proceedings on December 1st, 1930 in the said case of Jack Tansowny before His Honour Judge Stubbs of the said County Court Judges' Criminal Court at Winnipeg.

I submit that the conduct of His Honour Judge Stubbs in these two cases is injurious to the administration of justice in Manitoba.

As His Honour Judge Stubbs is appointed by the Dominion Government, I leave these matters in your hands for such action as you deem proper.

Yours truly,

(Signed) "W. J. MAJOR,"

Attorney-General.

COUNTY COURT JUDGES' CRIMINAL COURT
EASTERN JUDICIAL DISTRICT

Winnipeg, 24th November, 1930.

THE KING vs. DUDDLES

PROCEEDINGS AND SENTENCE BY JUDGE STUBBS

Indictment read to the Accused by the Clerk of the Court. Accused is asked to plead.

MR. BOWLES (Defense Counsel): Your honor, before the accused pleads—probably due to my lack of experience in Criminal law—I did not know there were so many charges. The accused was sent up on two charges. These are all worked out of them in the main.

THE COURT: These are all variations of practically the same thing.

MR. BOWLES: With this exception: It is suggested that the stealing and breaking was done at night. We are going to plead guilty, but there was nothing happened at night time.

THE COURT: Well, you better not plead guilty. If you are charged with burglary—

MR. BOWLES: We came here prepared to plead guilty of housebreaking and theft, but it did not happen in the night, it happened in the day time.

THE COURT: It makes a lot of difference. It makes a lot of difference in the sentence, for one would carry life imprisonment, perhaps, and the other would not be quite so serious in the eyes of the law. I would not plead guilty to burglary. I would ask the Crown, if the Crown is satisfied, to withdraw those counts.

MR. HANEY (Crown Counsel): I have no authority, your honor, to withdraw any of the counts. I understand there was a plea of guilty—

THE COURT: You have all the authority that is necessary or you ought not to be here. You are representing the Crown, aren't you?

MR. HANEY: Yes.

THE COURT: I am getting sick and tired of this. Every time the Crown comes here they say, "I have no authority." If you have no authority, then you should not be here. Every Crown Prosecutor comes before me with the same thing, "I have no authority, or I can only say this or say that." Send somebody here with some authority.

MR. BOWLES: The detective who has charge of the Crown's case has stated to me that the offence took place in the day time.

THE COURT: If it did not take place at night, don't admit it at night.

MR. BOWLES: Of course not.

THE COURT: Make the Crown prove it, if need be, that it did take place at night.

MR. HANEY: The Crown is prepared to admit, your honor, that it was not done at night.

THE COURT: In other words, you are prepared to withdraw the two counts of burglary?

MR. HANEY: Yes.

THE COURT: Alright. The two counts for burglary are struck out of the indictment.

MR. HANEY: Yes, one and four.

THE COURT: And the accused pleads guilty to two charges of housebreaking?

MR. BOWLES: Yes.

THE COURT: What about the charges of receiving stolen property?

MR. BOWLES: Well, I suppose he received them from himself.

THE COURT: Well, they are exclusive charges. If a man is guilty of theft he is not guilty of receiving stolen property. One excludes the other. I will strike out of the indictment the two charges of receiving and the two charges of burglary, and the accused pleads guilty to the two charges of housebreaking.

MR. BOWLES: Yes, your honor.

THE COURT: He pleads guilty to counts two and five.

MR. HANEY: If your honor will permit it, I would like to have the detectives' department give a synopsis of the case and of the evidence. I believe, Mr. Bowles, after that he is going to put in some character evidence.

THE COURT: I have read the depositions. Is there anything more you want to put in?

MR. BOWLES: The evidence sworn at the preliminary should be the Crown's statement. However, I don't object.

THE COURT: I think I will hear the character evidence and if you wish after that to meet it with anything, you are at liberty to do so.

MR. BOWLES: I crave your indulgence just for a few moments. While I am here technically as counsel for the accused, were it not for long

personal relationship I would not be here, because criminal work is not in my line. I do not know if your honor wishes to hear a statement of Duddles' version of what happened or not.

THE COURT: He has pleaded guilty. You better confine yourself to anything extenuating.

MR. BOWLES: Very well. I would like to say in regard to the second charge we plead to. Duddles was very much averse to pleading guilty to that. The facts, as he instructs me, are these: He bought this gun from a man named Charles Taylor, who worked for him six years ago or thereabouts, and he cannot locate him. He paid him $35.—Taylor said he brought it from overseas at the time of the war—and has not been able to locate Taylor, although he tried very hard to do so. I appreciate that in nearly all offences for theft the accused is apt to say he bought it from some unknown person, but it does seem to me that going back six years was a little unfair for the Crown to do when the evidence which would acquit the accused is undoubtedly not available at this time. However, I relied that your honor would take that into consideration and rather than re-hash the whole thing, we have pleaded guilty. (Mr. Bowles proceeds to give Mr. Duddles past history, and mentions names of several prominent people in the city of Winnipeg who speak highly of the accused, and who state they will continue to give him employment; he also produces letter from Mr. C. C. Ferguson of the Great West Life, which is read to the Court; also calls upon Mr. Bathgate, in person, to say a few words on behalf of the accused.)

MR. HANEY: I think it would enable your honor to get a better perspective of the case if you care to hear Detective Mercer.

THE COURT: What is it you want to say?

MR. HANEY: Just to get the general character of Duddles as known by the police.

MR. BOWLES: They will admit he has never been charged with anything before.

MR. HANEY: I anticipate that.

MR. BOWLES: Why create a suspicion?

THE COURT: I did not want to say this, but I am always very suspicious of police evidence, because when policemen get a man in their toils they are out to get him, and they never let up until they get him, and their evidence is nearly always biased. In the last case I heard, the evidence of three policemen was very biased. I am always suspicious of police evidence. I do not like to have to say that. In the nature of things they are biased. They color and paint things worse than need be. I do not think I want to hear the police just now.

MR. BOWLES: I understand the Crown's representative is not pressing or asking for confinement.

THE COURT: Oh! He does not have to go back and ask for instructions?

MR. BOWLES: I think he has those instructions, from what he tells me, already.

THE COURT: Stand up, Duddles. I have listened very carefully to what has been represented by your counsel on your behalf, and what these other gentlemen have testified on your behalf, as to your character. I do not think that you are a criminal. But I do know what you are—you are a plain fool. Like many others, you are a victim of drink, and seventy-five per cent. of the cases of crime that come into court have some connection with drink. Now, evidently you cannot beat that drink game and you better recognize that and leave it alone. You cannot afford to drink anyhow. If you were a wealthy man with lots of money and could drink in your own place what you like and get away with it—but in your situation you cannot afford to drink—put it on no other ground than that, and no man, as Edison says, has too much brains that he can afford to dull and destroy any by the use of alcohol. In my opinion, any man who uses alcohol to the

extent that it interferes with his senses is a fool. Apparently drink has quite a violent effect on you. It has the same effect on you as it has on most people, it destroys your moral values. Put a few drinks into a man or woman and they begin to see things different, and they will do things under the influence of liquor they would not dream of doing if they were not drunk. That is the effect of the stuff. It destroys moral values, the perception of right and wrong. Put a few drinks into a girl and her virtue often becomes easy; she will do things she would not dream of doing without the drinks in her.

I am going to give you a chance, but you have got to leave the drink alone. You will never be able to get away with petty thefts like stealing guns, even though you be under the influence of drink. To get away with crimes you have to be in it on a pretty big scale, steal a million or two, or things of that kind. You have got to be a real big thief, and then perhaps you will get away with it, and even be rewarded, but not as long as you are a working man, Duddles. I am going to give you six months suspended sentence on each count.

Now, I do hope you are going to take this as a lesson. Evidently, you have got some pretty good friends. Do not throw them down. They have come to your rescue. Do not throw your family down. The rest of your life leave the drink alone and try to play the man and do your duty by yourself and by those dependent upon you.

MR. BOWLES: Would your honor be good enough to tell Duddles what suspended sentence means?

THE COURT: Yes. It really means sentence is held in suspense, and if you offend again, you will be liable to be punished, not only for the new offence, but you can be called up and sentenced for this offence; so sentence is simply in suspense. You do not get altogether free or clear; you may have sentence inflicted upon you sometime in the future, if you offend again.

(Court Closed)

COMPLAINT OR CHARGE NO. 3

COUNTY COURT JUDGES' CRIMINAL COURT
EASTERN JUDICIAL DISTRICT

Winnipeg, 1st December, 1930.

THE KING vs. TANSOWNY

JUDGMENT BY JUDGE STUBBS

HIS HONOR: It was intimated at the conclusion of this case on Friday that if it had been a civil case, I would then have given judgment right away. I adjourned it for further consideration, but I am of the same opinion. I must find the accused guilty.

If counsel wish to speak on the matter of sentence, I will hear them.

MR. HAIG (Defence Counsel): I would ask for suspended sentence. This man was the one most seriously hurt, and he has been out of work because of his injuries since last June. His wife and the other people in the car were also seriously hurt. The person who suffered the greatest injury was Mr. Tansowny. I think the ends of justice would be perfectly well served by suspended sentence. I hope my learned friend will agree to that in view of the fact that the poor chap has not been able to work.

MR. POTTER (Crown Counsel): Other than the fact that was brought out in cross-examination that this young man some years ago made a slip, there is no further record against him. As far as suspended sentence is concerned, the penalty is two years, therefore, our consent or concurrence is not required. I leave it entirely to your honor to deal with him.

JUDGE STUBBS: The only argument counsel for the accused advances on behalf of leniency is that the man himself was the chief sufferer. I have several times stated from this bench that if a man has no regard for his own neck, for his own safety, the best thing he can do is to get out and break it by himself without hurting anybody else. That is, if that is all the value he places upon it; but the serious aspect of these cases is that the fool at the wheel does not only endanger his own life but he endangers other people's lives, other people's safety, and other people's property. This case furnishes a very good illustration of it.

The accused is extremely fortunate that he is not here facing a much more serious charge than the one for which he has been indicted. Only by good fortune he is not being tried for manslaughter, instead of a lesser offence.

In one sense, I suppose, some argue that the man who commits these motor offences is not a criminal—criminal in the ordinary sense, that is to say. Well, I think that the man who has no regard for other people's lives, other people's safety, and drives a dangerous instrument recklessly over our streets, as so many do, is, at least, criminally negligent, and we see it on all sides every day. When I left this court on Friday afternoon to walk home, I was hardly allowed to get home without being nearly killed. I was walking across Marion, where St. Mary's intersects it, when some young, mad fool at the wheel of a car tore down St. Mary's avenue. I naturally assumed that he was going to stop at the intersection. He did not stop. He tore right through. He nearly knocked me down. Had I been a less agile man, he would have knocked me down. Is that kind of thing to be allowed to go on all the time, people to be injured, sometimes very seriously, without any consequences to the offender?

It is extremely difficult to know how to deal with a case of this sort and what punishment to mete out, and it is becoming increasingly difficult for some courts to know how to gauge their sentences for criminal offences, because when rich rogues and wealthy scoundrels and those possessed of

social power and political influence can get off with nominal sentences, or very light sentences, it is extremely embarrassing for the conscientious judge, with some sense of justice and proportion, to know how to sentence the ordinary run of poor men with no social power and no influential friends, who come before him. The age-long grievance, that there is one law for the poor and another law for the rich, has been strikingly illustrated throughout Canada in the last year or two, and when a few wealthy rogues can steal more money than all the bank robbers and all hold-up men and common thieves since Canada began, and get off with nominal punishment, it is very disturbing, not only to some judges, but, more serious still, to the public mind.

I am going to deal with the accused leniently, in the circumstances, and I sentence him to two weeks' imprisonment. I find him guilty on all counts. The sentences to run concurrently.

(Court Closed)

COMPLAINT OR CHARGE NO. 4

LETTER FROM ATTORNEY-GENERAL TO MINISTER OF JUSTICE

July 29th, 1932.

Honourable Hugh Guthrie, K.C.,
Minister of Justice,
Ottawa, Canada.

My dear Mr. Guthrie:

I enclose you a typewritten report made by the Court reporter who was present at the hearing covering the remarks made by His Honour Judge Stubbs on 18th inst. when imposing sentence on Yvonne Gibson alias Flynn.

His Honour Judge Stubbs was sitting as a speedy trial judge when he tried the case in question.

I submit with the greatest deference that when he imposed sentence as aforesaid there was no warrant whatever for His Honour Judge Stubbs stating as follows:

> "Whether done by the Attorney-General of the province on the floor of the Legislature in defaming one of His Majesty's judges."

I submit further that I am speaking in moderation when I say that the proper and orderly administration of civil and criminal justice in Manitoba and the respect for constituted authority in Manitoba are being seriously undermined by the conduct of His Honour Judge Stubbs in the above and other instances.

I suggest that your Government take such action as it deems proper under the circumstances.

Yours truly,

(Signed) "W. J. MAJOR,"

Attorney-General.

COUNTY COURT JUDGES' CRIMINAL COURT
EASTERN JUDICIAL DISTRICT

Winnipeg, 18th July, 1932.

THE KING vs. GIBSON, alias Flynn

JUDGMENT BY JUDGE STUBBS

"You have pleaded guilty to what is very rightly in law considered a very serious effence—the offence of perjury. Out of Court known as common or garden lying. In Court, where the false statements are made under oath, called perjury; but lying is lying, wherever it is made, and whenever it is made, and by whomever made. Lying is lying, in Court or out of Court, on oath or off oath, whether done by the Attorney-General of the province on the floor of the Legislature in defaming one of His Majesty's judges, or whether done by a humble citizen like yourself, caught in the toils of the law in a vain attempt to extricate yourself, and to avoid the consequences of your wrong-doing.

"Now, I am going to deal leniently with you, as I think your case deserves. I don't look upon you as a criminal. As a matter of fact, I sympathize with you. I think you are just an unfortunate victim of bad associations and bad environment. I am going to let you go on a suspended sentence, and I hope that you will profit by this experience, and endeavor to keep out

of bad associations, and endeavor to keep from doing wrong in the future. Particularly leave the liquor alone. You are a young girl; nothing to gain by travelling that road; everything to lose. Liquor will destroy your moral fibre, as well as your physical fibre, and when you start drinking you will do things which you would not do if you were not drinking, because it blurs your sense of right and wrong. Your moral resistance is lowered by the use of liquor, and probably more people go wrong through using liquor, certainly in certain offences, than from any other cause. I suspend sentence upon you for two years. You will understand that means that at any time during that period, if you offend the law again, in any way, you can be brought back before this Court and then sentenced upon the sentence which is now being suspended."

(Court Closed)

COMPLAINT OR CHARGE NO. 5

LETTER FROM ATTORNEY-GENERAL TO MINISTER OF JUSTICE

14th September, 1932.

The Hon. Hugh Guthrie, K.C.,
Minister of Justice,
Ottawa, Canada.

Dear Sir:

Re REX vs. CHARLES RAE

I am sending herewith copy of part of the reporter's notes taken during the hearing of the above mentioned case. I wish particularly to draw your attention to the comments of His Honour Judge Stubbs, the presiding judge, regarding the Court of Appeal of this province.

I also enclose copy of a Winnipeg newspaper containing a report of this trial, which newspaper has a wide circulation in this province.

It is hard to conceive of anything which would tend more to create contempt for the Courts of Justice of this province or to bring into disrepute administration of the criminal law than remarks such as this from a judge sitting in one of the criminal courts of the province. I submit that this is a proper case in which your department should take action.

Yours truly,

(Signed) "W. J. MAJOR,"
Attorney-General.

COUNTY COURT JUDGES' CRIMINAL COURT
EASTERN JUDICIAL DISTRICT

Winnipeg, 9th September, 1932.

THE KING vs. RAE

EXTRACT FROM PROCEEDINGS BEFORE JUDGE STUBBS

MR. JOHNSON (Crown Counsel): I want to recall Mr. Sharp.

THE COURT: Why didn't you continue with him?

MR. JOHNSON: I thought I would finish with the other two, because they were very short, and I wanted Mr. Sharp to testify as to the Petley matter.

THE COURT: You should have finished with the man while you had him in the box, or excluded him from the court room. It is a matter which I commented upon at the beginning of this trial.

MR. JOHNSON: I don't think anything Mr. Sharp will say could be influenced by anything he has heard—

THE COURT: How do I know? How does anybody know?

MR. ELLOR (Defence Counsel): I think it is hardly fair to call Mr. Sharp. Mr. Sharp was here at that time, and was available after Petley had given his evidence.

THE COURT: I am not going to allow this witness to be recalled. You should have proceeded with him at the opening of this Court.

MR. JOHNSON: It is necessary to have Mr. Sharp give evidence after Mr. Barber.

THE COURT: Why didn't you say that, and have the man excluded from the court room?

MR. JOHNSON: I thought I had indicated that sufficiently, Your Honor. It is necessary to have him give evidence in connection with this matter.

THE COURT: You should have put him in in the right place.

MR. JOHNSON: I indicated—

THE COURT: I have ruled.

MR. JOHNSON: I want to renew my application for the admission of the books as exhibits.

THE COURT: That also has been ruled upon, several times, yesterday.

MR. JOHNSON: I want to place it on the record.

THE COURT: It is already on the record.

MR. JOHNSON: Will Your Honor listen to authorities on this?

THE COURT: No.

MR. JOHNSON: I want to submit the recent Martin case as an authority.

THE COURT: I have ruled on the matter and it is disposed of. It is a question that the evidence so far adduced in this particular trial has not been sufficient to admit these books.

MR. JOHNSON: I simply refer the Court to the Martin case, in which the books were admitted in evidence, even though the accused had never made a single entry.

THE COURT: Mr. Johnson, you happen to be counsel here and I happen to be the Judge. When I have ruled, I have ruled, and I usually know my own mind.

MR. JOHNSON: I realize that, Your Honor.

THE COURT: Cease then. There is a point beyond which counsel should cease to argue and you have passed that point.

MR. JOHNSON: I don't agree with that, Your Honor.

THE COURT: You don't have to agree with it, but it arises out of our respective positions.

MR. JOHNSON: Will Your Honor not hear any further evidence of any nature?

THE COURT: That is a very improper question to ask. If you have any further witnesses to bring, bring them and we will see what evidence they have.

THE COURT: Do you rest?

MR. JOHNSON: Yes, Your Honor.

THE COURT: The Martin case was tried and disposed of on its own facts. This case is entirely different; the positions are not comparable.

VERDICT

The accused is indicted on two counts—one of theft of the sum of $2,480.13, theft by a servant—the other for receiving and misappropriating these moneys in that capacity. I indicated my position yesterday, in this matter. The evidence is very general and lacking in the necessary particularity to bring home the offence charged to the accused. He is charged as the cashier of this concern. The evidence shows that he was not the cashier, or at least not the sole cashier. He was supposed to have kept the cash book, and there were half a dozen other people who made entries in that cash book, looked after the cash, made out deposit slips and made up monthly statements. As I said yesterday, there were too many cooks at this broth to determine with any certainty who spoilt it; and there is quite as much likelihood that somebody else spoilt it as the accused, and you cannot say he is guilty of theft merely because you show that certain monies,

several small specific sums, were paid to him at different times. You have got to show that he actually stole that money. That cash went into the business, and was not solely under the control of the accused—not by any means under the sole control of the accused.

If ever there was reasonable doubt, surely it sticks out all over this case? It would be wrong, absolutely wrong, for any jury, or any judge, on the facts before this Court, to make a specific finding of theft against any person on this evidence. As far as the theft of this particular sum is concerned, certainly there is no evidence that this $2,000 odd dollars was stolen; as a matter of fact, there is no definite evidence before this Court yet that anything has been stolen at any time by anybody. Because there is a general suggestion, not yet properly proven, of a general deficiency in the books of this company, no Court, in view of the evidence, could take the responsibility of convicting. It would be altogether wrong for it to think of doing so.

THE COURT TO MR. ELLOR: The accused has been in custody for how long?

MR. ELLOR: Since about the end of May.

THE COURT (continuing): He has been in custody several months on an offence which he certainly has not been proven guilty of.

The Martin case has been dragged in here several times. On the basis of the Martin case and the findings of the Court of Appeal, if I were to find this man guilty and sentence him—if, as the Court of Appeal has held, a term of 18 months' imprisonment is a proper sentence for the theft of $284,177.18, what would be the proper proportional sentence for this man?

THE COURT: I am going to acquit you, Mr. Rae, and the next time you get into trouble you will have a big credit coming to you on your offence.

(Court Closed)

AFTERWORD

On second thoughts, I have decided to include the following material in this pamphlet. It speaks for itself and needs no comment from me; except that I desire to express my sincere thanks and gratitude for the support given me by the press, and, what is more important, given to the fundamental issues involved.

EDITORIAL IN THE WINNIPEG TRIBUNE

Dated 28th September, 1932

NEW RULES FOR JUDGES

Are there to be new rules set up to guide judges in their public conduct? Is a code to be written to tell judges what they may and may not say in public? Must a judge so guard his every word in future that he may be sure no one—that is to say, at least no one whom the accident of politics has placed temporarily in a position of authority—will be offended at his utterances?

In the past it has been assumed that if a judge were beyond suspicion so far as relates to his integrity, his efficiency, and his public and private conduct, he had absolute security of tenure in his position. Is it now to be established that he may also be ignominiously dismissed if his utterances, or any of them, are in any degree unwise, undignified or provocative? And not necessarily unwise or undignified in the eyes of the general public, but only to the mind of one upon whom politics has bestowed a brief authority?

These reflections arise from the case of Judge Stubbs, senior County Court judge of this judicial district. A commissioner has been appointed to hold hearings into his "case" upon complaint by the Attorney-General of Manitoba. Public hearings might very well be held into the fitness of the Attorney-General to hold his position, on the score of some of his utterances in the recent election campaign. But as a result of that campaign he holds authority which he has now exercised to bring about hearings into some public utterances of Judge Stubbs.

Judge Stubbs is above suspicion as to his integrity. That much everyone admits. He is also above criticism as regards his competency as a judge, for admittedly he has raised the standard of the county court in Winnipeg. The lawyers who have practised before him can testify to that. His private conduct and character are above reproach.

What is left to complain about? Why, it is charged he said imprudent things, possibly provocative things, in public. Is he unique among judges in that?

It may be admitted at once that one or two recent utterances by Judge Stubbs in county court were unwise and perhaps unfortunate in the inference that might be drawn from them. They were ill-advised. He said some things that were sensible, and some that were lacking in wisdom. Grant all that.

Does it follow that Judge Stubbs should be hurled from the bench? Has a judge no right to be wrong in his comments on public affairs, if he chooses to comment on them? Not wrong in his judgments, remember; not in his evenhanded administration of justice; but simply in comments on the state of society and law enforcement.

Our judges are suposed to be independent above all else. They may be inefficient. They may dispense bad law and worse justice. Their private conduct may be reprehensible, so long as it does not become a public

scandal. But we prize their independence above all else, and bestow upon them complete security in order that their independence may be a real thing. They can be impeached and removed only for grave cause. Why? To make their independence of any influence whatsoever the outstanding fact in their positions.

Every judge in the land has an interest in the complaint brought against Judge Stubbs and the subsequent steps taken in regard to it. And every good citizen has also an interest in the affair.

Most significant of all is the fact that a county court judge, unlike high court judges, may be dismissed by order-in-council. The high court judge can only be removed by impeachment of the Dominion Parliament.

It is evidently planned to "get" Judge Stubbs by the order-in-council route and we have its starting point in the appointment of a commissioner to investigate his conduct.

There may be and indeed there have been cases of judicial misconduct which warranted dismissal by order-in-council. The case of Judge Stubbs does not fall within that category or anywhere near it. His offence, if it is an offence, turns on the fine shades of meaning to be read into his observations on the social order of things and inequalities of the administration of the law.

Who is to determine the values of these fine shades of meaning and, finding them unfavorable to Judge Stubbs, to hold him unfit to sit on the bench? The prescribed course of procedure is for the government at Ottawa to perform that function following examination of the report of the Commission it has appointed to enquire into the case.

In other words, the authority to remove Judge Stubbs, if he is removed, is to be a political authority, or putting it more bluntly, an authority consisting of a group of politicians.

If any such plan is contemplated it should be promptly abandoned, for in plain words, the public will not stand for it. Neither Judge Stubbs nor any other judge, indicted on the doubtful charge of injudicious speech, can be placed at the mercy of governments and politicians. The very cornerstone of our judiciary is its security against these influences.

EDITORIAL IN THE OTTAWA JOURNAL

Dated 28th September, 1932

THE CASE OF JUDGE STUBBS

Following a protest from the Attorney-General of Manitoba the Federal Government has appointed Mr. Justice Ford, of Alberta, to conduct an inquiry into statements made in his judicial capacity by Judge L. St. G. Stubbs, of the Winnipeg County Court.

Judge Stubbs, in his own words, insists upon being himself "and not an official phonograph and judicial rubber stamp." That appears to be the main cause of the trouble, the explanation of the disfavor in which he is held by the Manitoba Government. Certainly the judge speaks his mind with great frankness. He is reported to have said flatly that there was one law for the rich and another for the poor. He taxed school boards with "criminal responsibility" for shutting out unemployed young men who wanted to attend. He asked in sarcastic tones what would be the proper penalty for an alleged theft of $2,500 when an appeal court had held 18 months a suitable term for stealing $284,000. He raises embarrassing questions, propounds unanswerable conundrums, stirs to a frenzy the dry bones of those who look upon the implicit following of tradition as the highest good.

As The Journal sees it, there is something honest, wholesome, and admirable in the calculated indiscretions of a judge who uses wisely the authority of his high post for calling attention to grievances and inequities We like to think of His Majesty's judges blazing with passion for the larger justice which is not bounded by law and limited by tradition; we like to see them as men who would rather achieve substantial justice by a cheerful disregard for precedent than blindly follow the law and custom laid down for them to no matter what end. The law is a human device representative of human weakness, a well-meant attempt to apply to the individual certain general laws derived from observation of mankind in masses. There is a higher law of equity, and its application for the most part rests in the hands of the judges, is dependent upon their humanity. their broad general experience of men and things, their wisdom and kindliness.

The great figures of the English Bench are the judges who spoke out their thoughts, who hated injustice and loved righteousness, whose judicial vision was not obscured by technicalities and precedents. The Canadian Bench has been, is fortunate in possessing such figures: men like Chief Justice Sir William Mulock, Chief Justice Latchford, big enough and brave enough to blaze a path of justice through the forest of laws. Judge Stubbs, if we mistake not, belongs to this tradition.

EDITORIAL IN THE WEEKLY NEWS, WINNIPEG

Dated 30th September, 1932

MR. MAJOR'S OWN RECORD

It is impossible to believe that the sinister attempt to remove Judge Stubbs from the bench will succeed. If it did, we believe the very stones of Winnipeg would rise and mutiny.

The Judge's remarks, as they appeared in the press, did seem to us lacking in some degree in wisdom and discretion. Apparently that fair-minded and honorable gentleman, W. J. Major, forwarded alleged remarks of the Judge to Ottawa without taking the trouble to verify them.

The Judge's explanation of the remarks in question leaves nothing to be desired. They arose naturally out of the cases, and whether one agrees with them or not were perfectly in order for him to make.

* * *

In these days of moral cowardice and moral lethargy the presence in a community of one or two people, or even of a single person, who will speak his or her mind though the heavens fall, is beyond all price. Most of us peep about to find ourselves dishonorable graves. We see wrong enthroned and right trodden in the dust, but it moves us not. We are too preoccupied with our own interests. We lack the energy to protest or the willingness to suffer.

Not so Judge Stubbs. He is a lonely antagonist of destiny, determined to remain the master of his fate and the captain of his soul. This community has passion and sympathy enough left to admire him for saying and doing the things it would like to do and say if it had the courage. If Judge Stubbs is to be disciplined by a spiteful attorney-general they, like the twenty thousand Cornishmen, will know the reason why.

* * *

It must occur to anybody who possesses a memory, to anybody who is solicitous for a high standard of public life, that there are others whom Mr. Justice Ford, of Alberta, might very well investigate when he is about it.

Not to beat about the bush, we mean some of the acts of the Honorable W. J. Major himself. A couple of years or so ago Mr. Major saw fit to resign from the Bracken Government following revelations made by the Royal Commission inquiring into the circumstances surrounding the grab of the Seven Sisters power site by the Winnipeg Electric.

There was a thoroughly good reason why Mr. Major should have resigned. It was good enough to have kept him out of public life for some years at least. But in a very short time he was back in his ministerial seat.

The News has no desire to dwell on this painful episode in Mr. Major's political history, but when this gentleman is turning every stone to oust a decent and honorable man like Judge Stubbs from public life, he cannot complain if the searchlight is turned upon himself.

Mr. Major resigned from the cabinet after it had been shown that during the negotiations by the Bracken Government for the transfer of the highly valuable Seven Sisters site to the Winnipeg Electric, he and also Hon. W. R. Clubb, another member of the Bracken cabinet, bought stock in the company.

What was the position? The Bracken Government was about to give the Company a tremendously valuable asset. The deal was unknown to the general public. But the deal, as soon as known, would obviously cause a sharp rise in the Winnipeg Electric's stock. So before the public knew all about it, Mr. Major and Mr. Clubb bought their stock. In other words, they took advantage of a deal they themselves were making to try and feather their own nests.

* * *

Well might both these ministers resign. Nothing more improper, nothing more clearly and specifically against the very spirit of honorable public life could well be imagined.

These gentlemen were ministers of a Manitoba cabinet. Both of them lived in this province during the humiliations of the Roblin regime, when the public life of this province sank to a tragically low ebb, and Manitoba became a byword throughout the Dominion. But neither that consideration nor any other was strong enough to restrain Mr. Major and Mr. Clubb when they saw a chance of feathering their own nests by a deal their own government was making and the facts of which were not generally known.

* * *

It must be presumed that Mr. Major's colleagues, including Premier Bracken, have consented to his vindictive attack on Judge Stubbs. So there are other things that it would be pertinent for Judge Mr. Justice Ford to inquire into. In quite recent years, we believe, both Premier Bracken and Mr. Clubb purchased shares in a supply firm to which the Bracken Government gives large contracts. Mr. Clubb evidently had learnt nothing from his Seven Sisters experience.

As if there were not hundreds of other bonds, stocks and shares to choose from on the market, or other investments of every sort, shape and description, Premier Bracken and Mr. Clubb had to choose the shares of a company to which they were giving big contracts.

No doubt it was legal, and if Premier Bracken and Mr. Clubb are content with the sanction of mere legality for their actions as public men, Manitoba ought to know it. The point was that they were in a position to influence the value, and therefore the selling price, of their shares by reason of being ministers of the Crown. By withholding provincial business from the company the shares would be less valuable. By according to it provincial business the shares would necessarily be more valuable.

That was the position of Premier Bracken and Mr. Clubb, associates of the Honorable Mr. Major, in trying to hound Judge Stubbs from the bench.

* * *

The people of Winnipeg and of Manitoba are watching what is going on. We should have thought that Mr. Major might have learnt something by having to take fifth place, after a score of counts, in the Winnipeg contest in the last provincial election. But some people are incapable of learning or forgetting.

EDITORIAL IN THE GLOBE, TORONTO

Dated 1st October, 1932

JUDGE STUBBS SUPPORTED

The Globe can recall few actions by a Cabinet Minister which have aroused as general denunciation as has the appointment of a judicial Commissioner to inquire into the pungent but sane and timely remarks by his Honor Judge L. St. G. Stubbs of Winnipeg. Reference has already been made in these columns to protests by newspapers of every shade of political complexion. The independent press of Ontario is a virtual unit in endorsing the reported remarks by the plainspoken Manitoba Judge. Conservative and Liberal papers vie with one another in asking the Minister of Justice for an explanation of his action.

In politics the Peterborough Examiner and the Ottawa Journal are on opposite sides. Yet both express almost identical views on the proposed investigation. These papers' expressions are typical of those of the whole Ontario press.

The Journal says:

> Certainly the Judge speaks his mind with great frankness. He is reported to have said flatly that there was one law for the rich and another for the poor. He taxed school boards with "criminal responsibility" for shutting out unemployed young men who wanted to attend. He asked in sarcastic tones what would be the proper penalty for an alleged theft of $2,500 when an Appeal Court had held eighteen months a suitable term for stealing $284,000. He raises embarrassing questions, propounds unanswerable conundrums, stirs to a frenzy the dry bones of those who look upon the implicit following of tradition as the highest good.
>
> As the Journal sees it, there is something honest, wholesome, and admirable in the calculated indiscretions of a Judge who uses wisely the authority of his high post for calling attention to grievances and inequities. We like to think of His Majesty's Judges as blazing with passion for the larger justice which is not bounded by law and limited by tradition; we like to see them as men who would rather achieve substantial justice by a cheerful disregard for precedent than blindly follow the law and custom laid down for them to no matter what end. . . .
>
> The great figures of the English Bench are the Judges who spoke out their thoughts, who hated injustice and loved righteousness, whose judicial vision was not obscured by technicalities and precedents. The Canadian Bench has been, is fortunate in possessing such figures: men like Chief Justice Sir William Mulock,

Chief Justice Latchford, big enough and brave enough to blaze a path of justice through the forest of laws. Judge Stubbs, if we mistake not, belongs to this tradition.

The Peterborough paper says:

> The man on the street will be inclined to look upon the probe as a case of much ado about nothing.
>
> The things Judge Stubbs has been accused of saying do not strike the public as being either dangerous or radical, and unless a jurist is expected, to use the words of Judge Stubbs himself, to be "an official phonograph and judicial rubber stamp," it is difficult to see what all the fuss is about.
>
> Surely it is not a very revolutionary thing for a Judge to remark that unless youths are provided with work or allowed to enter educational institutions they are liable to become demoralized or degenerate, nor can the average citizen find much fault in the Bench commenting upon light sentences for those guilty of stealing large sums of money.
>
> The whole country, as a matter of fact, has been giving voice to similar criticism, and also to complaints that wealthy offenders who were sentenced to prison have had their liberty restored without serving more than half their sentence.
>
> It will not help to stop such talk to have a Judge investigated because of frank statements on the bench.

The almost indecent haste with which Hon. Hugh Guthrie ordered the investigation of Judge Stubbs's remarks affords interesting comparison with the same Minister's persistent refusal to explain the premature and secret release of the financiers convicted of swindling and sent to Kingston Penitentiary.

Perhaps the investigation ordered by the Minister of Justice will have an effect altogether different from that intended. The crux of the criticism of Judge Stubbs was that he said there was one law for the rich and another law for the poor in Canada. In what respect is that statement astonishing today? In Ontario the press literally goaded the Attorney-General into taking long-overdue action against certain stock brokers whose swindling operations ran into millions and millions. The accused were convicted and given prison terms shorter than those inflicted for robberies petty by comparison. At the penitentiary the influential prisoners were transferred to the preferred-class resort camp—devised by Parliament as a reformatory for erring boys. If reports are true, the financiers enjoyed customary home comforts, including afternoon tea served to the accompaniment of suitable music. Then they were secretly released, one by one, before serving less than half the sentences inflicted by the courts.

Why? Perhaps the Winnipeg probe will help to explain.

EDITORIAL IN THE CITIZEN, OTTAWA

Dated 4th October, 1932

THE CASE OF JUDGE STUBBS

The case of Judge Stubbs of Winnipeg continues to arouse nation-wide interest. The reason for this lies not only in the fact that it is rather unusual for an attorney-general to ask for an inquiry by Ottawa into the conduct of a judge, but also in the fact that the ground for complaint against Judge Stubbs is so peculiar.

From what can be made out of the current discussion, Judge Stubbs has been saying things that do not suit the conventional minds of high officials who would rather be orthodox than right. What specific utterances of the learned judge gave rise to the present proceedings we do not know, but enough evidence is on hand to indicate pretty clearly that they are considered by the attorney-general of Manitoba to be not proper because they sound radical.

In any event, it is known that Judge Stubbs has long been celebrated as a man of fearless outlook and unconventional views on social equalities and legal contradictions. He has, it is said, been a sympathizer with the under-dog and an outspoken critic of things as they are.

In an article on the subject of Judge Stubbs the other day, the Winnipeg Tribune admirably stated the views of most broad-minded Canadians. They are to the effect that so long as no question exists as to Judge Stubbs' integrity and competence, he could not be removed from the bench merely for stating views that are provocative or imprudent to the powers that be. Concerning the judge's honesty and capacity, the Tribune says:

> Judge Stubbs is above suspicion as to his integrity. That much everyone admits. He is also above criticism as regards his competency as a judge, for admittedly he has raised the standard of the county court in Winnipeg. The lawyers who have practised before him testify to that. His private conduct and character are above reproach.

What, then, is left to complain about? Surely a judge cannot be removed because he says things which go against the sluggish social beliefs of those in authority? It looks decidedly as if something were wrong somewhere.

It ought to be added that Judge Stubbs' protest against false and libellous statements against him in the newspapers, including friendly newspapers, has to do with the report sent out from Winnipeg when the case first came to notice in which it was alleged that Judge Stubbs acquitted a man who was guilty of theft.

The facts are that the accused in this case was acquitted because there was no evidence against him, and for no other reason. There never was any question of convicting him in the judge's mind at any stage of the trial. After reviewing the evidence and making reference to another case, Judge Stubbs asked counsel for the accused how long his client had been in jail. On being informed that he had been there over three months, Judge Stubbs observed that the next time he got in trouble he ought to have credit on his offence.

The Citizen printed this despatch from Winnipeg, which came in the ordinary way. It did not comment editorially on this phase of Judge Stubbs' case, however, but takes this opportunity to draw attention to the facts.

NEWS DESPATCH TO THE GLOBE, TORONTO

OTTAWA ON TRAIL OF JUDGE STUBBS OVER YEAR AGO

Justice Branch After His Honor in January, '31—Manitoba Jurist Tells Department He Won't Be Censored

ATTEMPT AT CONTROL?

Official Move Dropped When Indignant Protest Is Registered

(Special Despatch to The Globe)

Winnipeg, Oct. 10.—"They're out to get Judge Stubbs."

This opinion—that the Federal Department of Justice had "gone gunning" for one of Manitoba's best-known jurists—has found free expression among responsible citizens of Winnipeg ever since Ottawa, instigated by Provincial Attorney-General Major, hurriedly ordered investigation of remarks said to have been made by Judge Stubbs in the course of a criminal court trial.

The Letters That Tell.

Today these citizens' views found solid support in correspondence to which The Globe obtained access, and which indicates that as early as January of last year the Dominion department was evincing an antagonistic concern toward Judge Stubbs's conduct of his court. On that occasion, the attack collapsed in its preliminary stages, when Ottawa received from prominent Manitobans of both political leanings expressions of wholehearted support for Judge Stubbs.

Main basis for both last year's criticism and this year's inquiry has been the Judge's candidly uttered conviction that "'respect' is at times shown to certain influential and wealthy persons in the administration of justice." The correspondence released today to The Globe involves a criminal trial in January last year, in the course of which Judge Stubbs made a general comment from the bench. The Federal Department of Justice at once seized upon a newspaper report of this comment—an inaccurate report, according to the Judge—and demanded a full explanation. Replying to Ottawa's letter, Judge Stubbs referred the department to the stenographic report of the trial rather than to press reports, and proceeded to express his ideal of "the true administration of justice."

Departmental Curiosity.

The department's letter follows:

"Ottawa, Jan. 2, 1931.

"556-30.

"Dear Sir,

"The attention of the Minister of Justice has been called to an item in the Winnipeg Daily Tribune of the 22nd January, 1931, headed "Bandit's Wife Acquitted by Judge Stubbs," at the end of which the following paragraph appears:

"Judge Stubbs, in discharging the prisoner, remarked that had she been the wife of a wealthy man convicted of theft it would not have been necessary to smuggle hack-saws into the jail. Political influence, a more effective and less risky means of release, would have been at her disposal.

"I am by direction to inquire from you whether you made the statement which is attributed to you in this paragraph, and, if so, to ask you to state fully what you had in mind in making this statement.

"Yours faithfully,

"W. Stuart Edwards, Deputy Minister of Justice.

"His Honor Judge Stubbs,
"Winnipeg, Man."

Judge's Reply

Judge Stubbs' reply was as follows:

"Winnipeg, Man., March 4, 1931.

"W. Stuart Edwards, Esq., K.C.,
"Deputy Minister of Justice,
"Ottawa, Ont.

"Dear Sir:

"I duly received your letter of the 26th January, but have delayed replying to it, because of the claim of right of censorship which is implicit in it, and which I repudiate. I am a judge, with all the rights, duties and responsibilities of that office. During my nine years' tenure of that office, I have endeavored to exercise its rights and to discharge its duties and responsibilities conscientiously and faithfully to the best of my ability, and without fear, affection or favor. How successful I have been in my endeavors, 'tis not for me to say. My record is well known to the public; it is as an open book, and I am content to let it speak for itself.

"With regard to the newspaper report referred to in your letter, the language attributed to me is not mine. Neither of the Winnipeg newspapers reported me correctly. Both of them, despite the fact that they purport to quote me, paraphrased my remarks in their own language to suit themselves. No doubt, the court reporter took a stenographic record of what I said, and a transcription of his notes would show exactly what was said, from which would appear clearly what was in my mind when I spoke.

"I simply made a passing reference to the double standard of rich and poor before the law in certain respects. The case before me was a charge of attempting to facilitate escape from prison. I contrasted the crude methods, "without the law," used in the case before me, with certain other methods, "within the law," sometimes used on behalf of influential and powerful persons to effect the same result. That was all. A perfectly plain, simple statement of fact.

"In conclusion, let me say, I sincerely believe the true administration of justice is the firmest pillar of good government, and nothing is more subversive of true justice and more destructive of good government than the "respect" which is at times shown to certain influential and wealthy persons in the administration of justice.

"Yours faithfully,

"L. St. G. Stubbs."

EDITORIAL IN THE GLOBE, TORONTO

Dated 12th October, 1932

THE PURSUIT OF A JUDGE

Correspondence made public in The Globe yesterday shows that the Department of Justice at Ottawa "went gunning" for Judge Stubbs of Winnipeg more than a year ago. At that time, apparently, public protests from prominent men of both political parties resulted in the matter being dropped. Twenty-two months later an inquiry is pending, as a result of statements by His Honor similar to those which prompted official correspondence on the previous occasion.

Manifestly, Judge Stubbs said something each time which the Department of Justice does not want said. In effect, he stated that justice is not always administered evenly for rich and poor. He was dealing with a different set of circumstances on each occasion, yet was led to the same conclusion. Had he remained quiet, Ottawa, in all probability, would have been satisfied "the ends of justice" had been served. He put his thoughts in words, however—words which get into print, perhaps not as spoken, but nevertheless they were readable and understandable, and conveyed the impression that something was wrong with "even-handed justice." This was another matter, and the Department acted without loss of time.

It was so prompt in January, 1931, that only four days elapsed before the publication in Winnipeg of what purported to be His Honor's remarks when a letter left Ottawa asking an explanation. Judge Stubbs did not reply for more than two months, for reasons he gives in his letter, but even during this period nothing seems to have been done at Ottawa to discover why it should be necessary for a member of the Bench to call attention to a situation crying for remedy. And nothing seems to have been done since then, although it has been repeated a hundred times by a hundred different persons that there is one law for the rich and another for the poor. It has been repeated every time the cases of the brokers at Collins Bay were discussed. It has become the rather popular opinion that the Department of Justice has two distinct rules for dealing with the two classes of offenders.

The Globe does not suggest that Judge Stubbs was expressing anything but his own opinion. It points out that while allegations of partiality were made generally and the Minister of Justice was called upon often and by numerous newspapers to explain why the brokers at Collins Bay received treatment not accorded the ordinary run of prisoners he maintained studied silence. The Globe does not know that Judge Stubbs had Collins Bay and the brokers in mind nor on what he based his comments, but submits that what he said required saying. He said something that needed to be said, and this apparently is the sole offense for which he is under inquiry.

There has been ample time and there have been a multitude of opportune occasions for investigating the right or wrong of law administration as between rich and poor since the Department first "went after" the Winnipeg Judge in January of last year. Had it been desired to clarify the situation, to satisfy the public that a difference in treatment did not exist, it was not necessary to wait until the autumn of 1932 to seize upon another statement by His Honor. The only interpretation the public will place upon this is that the object is to discredit and humiliate Judge Stubbs because he stated an obvious fact, and not to prove that the administration of law is fair and impartial.

If the Department pursues its course it is liable to strengthen the public view that partiality and unfairness are among its guiding principles;

that they apply to Judges as well as to law enforcement. The Winnipeg Tribune has pointed out that a County Court Judge may be dismissed by Order-in-Council, so that it is a simple matter to get rid of Judge Stubbs. That is, it would be a simple matter if it did not at once carry the implication that the inquiry and dismissal were actuated by political motives rather than a desire to maintain the high standing of the Canadian Bench. On this the Tribune says, pointedly:

> If any such plan is contemplated it should be promptly abandoned, for, in plain words, the public will not stand for it. Neither Judge Stubbs nor any other Judge indicted on the doubtful charge of injudicious speech can be placed at the mercy of Governments and politicians. The very corner-stone of our judiciary is its security against those influences.

Rather than pursue Judge Stubbs, the Department should seek to clear up the charge and the widespread impression that justice is not evenly administered. This may be done by taking stated cases—including those of the brokers—and explaining why differences have existed. Explanations are overdue, in any event. They might get the Department somewhere. Getting after the Winnipeg County Court Judge is likely to prove a boomerang.

EDITORIAL IN THE CITIZEN, OTTAWA

Dated 13th October, 1932

MORE LIGHT ON STUBBS CASE

The correspondence which is published on this page today between the Department of Justice and Judge Stubbs of Winnipeg throws new and helpful light upon this interesting case. It first of all shows that the justice department was seemingly very eager to pounce on what seemed a provocative and injudicious statement by the judge as an excuse to take him to task. It secondly shows in clearer outlines the essential nature of Judge Stubbs' philosophy on the vital question of administration of justice in general.

It will be noted that the department at Ottawa seized on a newspaper report—inaccurate, according to Judge Stubbs—of remarks made by him in order to demand a full explanation of something he had said reflecting upon the double standard of rich and poor before the law. One might have supposed that the department, of all departments, would have been sure of its grounds before acting as it did in its eagerness to bring Judge Stubbs to book.

At this time, nearly two years ago, it might be added, there were reports in Winnipeg of an investigation into Judge Stubbs' conduct on the bench. These reports led to protests to Ottawa from men of high standing in the law and in the community at the Manitoba capital. And presumably partly as a result of these protests, the matter was not pursued further.

As for Judge Stubbs' judicial philosophy, it is summed up in the last paragraph of his letter, in which he says:

> I sincerely believe the true administration of justice is the firmest pillar of good government, and nothing is more subversive of true justice and more destructive of good government than the "respect" which is at times shown to certain influential and wealthy persons in the administration of justice.

Everyone with the faintest conception of the essentials of civilized progress must agree with this view. It is against the power of wealth to evade the full penalties of justice that Judge Stubbs has mainly been active in protesting. Of course, the law is impartial and so are most of those charged with its administration. But that wealth has advantages which the poor have not has been demonstrated time and again. The very wealth they possess enables the wealthy to obtain these advantages.

In speaking out against anomalies which arise from this double standard, Judge Stubbs has shown himself to be a man of courage and conviction. We could do with more of his kind. Much more is accomplished towards the realization of the ideal of impartial justice by such a judge than by a dozen who, behind the mask of judicial dignity, merely deliver conventional moralizings to conceal their own lack of humane sympathies and apprehension. In saying what he does regarding the influence of wealth in the administration of justice, Judge Stubbs but voices the feelings of all true lovers of humanity and respecters of the ideal of justice.

OBITER DICTA IN THE KING VS. CHORNEY ET AL

I close with the following observations made in the above case on 17th October, 1932:

"Society is very tolerant; it forgives everything but truth." This was one of the epigrams of the late Elbert Hubbard. By society is really meant the few who rule and control the many. For the function in society of the latter is mainly to serve and obey the former. Under these conditions, truth becomes only a relative term. That is true which pleases, that untrue which displeases, the ruling classes at any given place and time.

Consequently, the pulpit dare not preach the full truth, for fear of displeasing the pew; for he who pays the piper calls the tune. The bench must not speak it, for fear of offending the law officers of the crown that may happen to be, or the legal hierarchy, or both. And so on. Thus, "Truth forever on the scaffold. Wrong forever on the throne." And few there be, even of those who worship at the shrine of truth, who dare denounce the wrongs of the world for fear of consequences to themselves.

Particularly, at such times as these, fear is the controlling and dominating passion. We are a fear-stricken people. Our rulers appear hopeless and helpless to cope with the situation. They are distracted and panicky with fear. This fear manifests itself in force and restrictions and repressions on all sides. Wherefore are we fearful? We are afraid to face the actualities and realities of the situation. Afraid of the full truth—with its necessary implications and inexorable consequences

This condition of affairs recalls an appropriate and memorable passage from Sir John Macdonnell's Historical Trials. A wonderful book that ought to be widely read, from the pen of a great scholar, a learned lawyer, a splendid, impartial judicial officer. His concluding passage in his account of the trial of Giordano Bruno is, as follows:

> But—and it is one of the chief lessons to be derived from these studies—fear brings back the primitive conception of the functions of courts; not necessarily, or indeed often, personal fear, but fear of changes; fear on the part of the upholders of the old order; fear of the effects of the discoveries of new truths; fear of emerging into the full light. Where such fear is justice cannot be, a court becomes an instrument of power; judges are soldiers putting down rebellion; a so-called trial is a punitive expedition or a ceremonial execution—its victim a Bruno, a Galileo, or a Dreyfus.

Personally, in following the inner light as I have seen and see it I have tried to always face facts without fear. I have not fashioned my conduct, to quote Elbert Hubbard again, on his aphoristic prescription:

"To escape criticism: Do nothing, say nothing, be nothing." Consequently, I have not escaped criticism. A critic must be prepared for criticism and I never expected and never wanted to escape it. But one has a right to expect some proportion and sense of values in such things. One has also the right to expect due recognition from the constituted authorities of the constitutional rights and status of a judge. Attempts have been made and have succeeded to punish me for certain criticisms which I have made of our legal and judicial system. Other such attempts are now being made. Let me say most emphatically, that if our legal and judicial system is such a frail, fragile, delicately constituted, artificial structure, that the few puffs of the fresh air of criticism which I have blown against it have so seriously affected it that it is impaired and deterred in

its functioning, then it is high time a hurricane came along and blew the whole thing away. Then we might get a structure of better, stronger, tougher, more vigorous constitution—one less anachronistic and more adapted to the needs of the age in which we live. In the words of Patrick Henry: "If this be treason, then make the most of it." If it be judicial heresy, then I am impenitent, and say, "We want more heretics."

L. ST. G. STUBBS.

Winnipeg, Manitoba,
25th October, 1932.

There are many, I know, who think that a judge, like a good child, should in matters of this kind be seen and not heard. But for my part I am not of that opinion, for if a judicial person knows that the machine he is working is out of date and consuming unnecessary fuel, blacking out the moral ether with needless foul smoke, and if, moreover, he thinks he knows how much of this can be put right at small expense, should he not mention the matter not only to his foreman and the frock coat brigade in the office—who are the folk who supply the bad coal—but to the owner of the machine who has to pay for it and live with it—The Man in the Street?—Judge Sir Edward Abbott Parry, in "The Law and the Poor."

CHANGE

New times demand new measures and new men;
The world advances and in time outgrows
The laws that in our fathers' day were best;
And doubtless, after us some purer scheme
Will be shaped out by wiser men than we,
Made wiser by the steady growth of truth.
The time is ripe, and rotten-ripe for change;
Then let it come; I have no dread of what
Is called for by the instinct of mankind,
Nor think I that God's world would fall apart
Because we tear a parchment more or less;
Truth is eternal, but her effluence,
With endless change, is fitted to the hour;
Her mirror is turned forward to reflect
The promise of the future, not the past.

James Russell Lowell.

Law has her seat in the bosom of God; her voice is the harmony of the world, all things in heaven and earth do her homage, the very least as feeling her care and the greatest as not exempt from her power.

Bishop Hooker.

This sonorous description of the ideal of law is as "sounding brass or a tinkling cymbal" unless the common processes by which human justice is obtained are made simple, unless it can be had promptly, cheaply, readily, by the poor and humble as well as by the rich and powerful.

George W. Alger,

of the New York Bar.

Let not the law of thy country be the non ultra of thy honesty; nor think that always good enough which the law will make good. Narrow not the law of Charity, Equity, Mercy. Join Gospel Righteousness with Legal Right.

Sir Thomas Browne,

Christian Morals, Sect. 11.

Laws grind the poor and rich men rule the law.

Oliver Goldsmith: "The Traveller."

Give me the liberty to know, to utter, and to argue freely according to my conscience, above all other liberties.

John Milton.

I do not believe in a word that you say, but I will defend with my life, if need be, your right to say it.

Voltaire.

Those who deny freedom to others, deserve it not for themselves, and under a just God cannot long retain it.

Abraham Lincoln.

Freedom is a mood, a frame of mind.

James Harvey Robinson.

No matter whose the lips that would speak, they must be free and ungagged. The community which does not protect its humblest and most hated member in the free utterance of his opinions, no matter how false or hateful, is only a gang of slaves. If there is anything in the universe that can't stand discussion, let it crack.

Wendell Phillips.

There is but one thing wanted in the world, but that is indispensable. Justice! Justice! In the name of Heaven! Give us Justice and we live! Give us counterfeits of it, or succedanea for it, and we die.

Thomas Carlyle.

INDEPENDENCE OF THE BENCH

THE JUDGES ARE TOTALLY INDEPENDENT OF THE MINISTERS THAT MAY HAPPEN TO BE, AND OF THE KING HIMSELF. — Lord Mansfield, Proceedings against the Dean of St. Asaph (1783), 21 Howell's State Trials, 1040.